



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10979763

Date: NOV. 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a filmmaker who has primarily worked as a first assistant director, seeks classification as an alien of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner describes herself as “one of the most renowned Filmmakers from [redacted]” A printout from the Internet Movie Database (IMDb) names 20 films on which the Petitioner worked since 1998, most of them in [redacted]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met eight of these criteria, summarized below:

- Σ (i), Lesser nationally or internationally recognized prizes or awards;
- Σ (ii), Membership in associations that require outstanding achievements;
- Σ (iv), Participation as a judge of the work of others;
- Σ (vi), Authorship of scholarly articles;
- Σ (vii), Display at artistic exhibitions or showcases;
- Σ (viii), Leading or critical role for distinguished organizations or establishments;
- Σ (ix), High remuneration for services; and
- Σ (x), Commercial success in the performing arts.

Regarding criterion (vi), the Petitioner does not claim to have authored scholarly articles, but she asserts that she has submitted comparable evidence. The Director concluded that the Petitioner met three of the evidentiary criteria, numbered (i), (iv), and (vii), and proceeded to a final merits determination. On appeal, the Petitioner asserts that she meets all eight of the claimed evidentiary criteria.

After reviewing all of the evidence in the record, we conclude that the Petitioner has satisfied only two of the criteria, as explained below. Therefore, the petition does not merit a final merits determination, but because the Director reached such a determination, we will address the relevant issues below.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Director concluded that the Petitioner satisfied this criterion. We disagree.

The founder/director of the [redacted] [redacted] states that the Petitioner "was nominated and awarded as the Best Assistant director of the [redacted] Cinematography at the second meeting of filmmakers in [redacted]. The official does not discuss the recognition of the award.

The Petitioner claims: "The [redacted] Award is the highest honor attainable in the field of film entertainment in [redacted]. Despite this claimed importance, the Petitioner submits no first-hand documentary evidence that she received it. Instead, she submits a translation of what appears to be a press release listing several award recipients. Also, the minimal documentation submitted does not support the Petitioner's claim that the award from [redacted] is a nationally recognized award.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner initially asserted that she satisfies this criterion through her membership in [redacted] and the [redacted]. The Petitioner did not submit evidence of [redacted]'s membership requirements, and she does not cite [redacted] as a qualifying association on appeal.

The president of [redacted] (who is either the Petitioner's spouse or has exactly the same name as him) states: "To become a member, you must have produced at least two long feature films, have at least 10 years of experience in filmmaking, and attain a level of national recognition." He claims that these requirements are "provided in the bylaws of the organization," and quotes what he identifies as "clause (6.b.)." The quoted passage, however, does not include any requirement for "a level of national recognition." It only requires participation in "at least one . . . short, medium or feature film, which has been exhibited or publicly disseminated [in] any form within the last ten (10) years." The Petitioner does not submit the complete bylaws or identify any website where they are available. Participation in one film within a ten-year period is not an outstanding achievement, and the other claimed requirements are unsubstantiated.

The Petitioner has not established that she meets the requirements of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner claims to be "routinely asked to judge competitions featuring productions," but identifies only two instances: the [redacted] Short Film Festival, held in conjunction with the annual [redacted] Book Fair in [redacted], and the [redacted] Film Festival.

We agree with the Director that the Petitioner has satisfied this criterion. We will discuss it further in the context of the final merits determination.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner maintains that her presentation of "courses, seminars, and workshops" at the [redacted] Short Film Festival [redacted] is comparable to published material. The Petitioner also refers to "academic workshops, seminars, and classes at distinguished film production institutions" but does not identify the institutions or cite supporting evidence.

Under 8 C.F.R. § 204.5(h)(4), a petitioner may rely on "comparable evidence" only when the regulatory criteria do not readily apply to a given beneficiary's occupation. The Petitioner claims the scholarly articles "criterion does not readily apply to [her] occupation" because, in film, "an instructor must interact with his or her audience in order to present a technique, method, or practice. Filming is about physical movement and coordination. This cannot be taught or presented in the form of a scholarly article." This argument is not persuasive. The record names several film schools that offer graduate degrees, demonstrating an academic framework that would appear to be conducive to scholarly publications. The assertion that certain skills are best taught in person does not demonstrate that scholarly publications do not exist in the film industry. The record does not establish the specific content of the workshops that the Petitioner taught.

Furthermore, the Petitioner has not established that classroom instruction, limited in its reach to those in one classroom at a particular time, is comparable to published material which is disseminated to others in the field and remains available indefinitely for review and reference.

The Petitioner has not authored scholarly articles, or submitted comparable evidence.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Director granted this criterion, because the Petitioner worked on seven films shown at various film festivals. We will not disturb this finding, but we will revisit the issue in the context of the final merits determination.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

To satisfy this criterion, the Petitioner must establish three separate things: that her role was (1) leading or critical (2) for organizations or establishments (3) with a distinguished reputation.

The Petitioner states:

[A] First Assistant Director works to see each film from pre-production to post-production. This person . . . serves as an overall manager of the film as she knows the script, scenes, the actors, the roles, and the financial component of the production. She will be in charge of the actors and provide technical direction to the film, as well as manage the lighting, filming, and sound crews.

The record indicates that a first assistant director plays a critical role within the context of a given production. But the regulation requires the role to be leading or critical “for organizations or establishments,” and the Petitioner has not established that the productions themselves constitute organizations or establishments. Likewise, the Petitioner must establish the distinguished reputations of those organizations or establishments. The success or critical reception of any one particular film does not necessarily establish the overall reputation of an identifiable organization.

The Petitioner has shown that she served as first assistant director on some films that received good reviews, but the evidence does not show that her role was critical for any identified organization or establishment.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Petitioner states that she has earned \$500 per day on certain projects, and she submits a printout from the Bureau of Labor Statistics (BLS), indicating that the top 10% of producers and directors earn \$181,780 per year. The Petitioner states: “This amounts to \$498.03 per day (\$181,780 / 365 days.)” The record, however, does not show that the Petitioner had received that level of remuneration at the time of filing, as required by 8 C.F.R. § 103.2(b)(1). Letters from 2015 and 2016 discussed her expected participation on projects to be undertaken in 2017, but there is no evidence that she actually worked on those projects.¹ An IMDb printout of the Petitioner’s filmography, submitted with the petition, shows neither project, and their filming schedules overlapped at locations thousands of miles apart. A July 2018 contract indicated that she would be paid \$500 per day for her work on [REDACTED] but this occurred several months after she filed the petition in March 2018. ([REDACTED] does not appear on the IMDb printout submitted in March 2018.) The Petitioner has not submitted any evidence of compensation that she received before she filed the petition.

¹ One of these letters was apparently written by the Petitioner’s spouse.

Even then, the BLS printout in the record does not support the Petitioner's extrapolations. The table shows a 50th percentile (median) annual wage of \$68,440, and a 90th percentile figure of \$181,780. A filmmaker earning \$500 per day would have to work 364 days to surpass the 90th percentile figure.

In the denial notice, the Director noted that the Petitioner has not shown her total annual earnings. On appeal, the Petitioner does not address this important point, instead repeating the BLS figures and calculations which presume virtually uninterrupted employment. The record does not establish that the Petitioner has worked every day without interruption. Rather, the IMDb printout indicates that sometimes years elapse between projects.

Because the Petitioner has not provided more comprehensive figures for her total earnings, she has not established that her overall annual earnings justify extrapolating the earnings from isolated projects to annual figures.

Furthermore, although the Petitioner asserts that the quoted figures pertain to "filmmakers," the BLS printout pertains to producers and directors of "stage, television, radio, video, or motion picture productions for entertainment, information, or instruction." The annual mean wage for producers and directors in the "Motion Picture and Video Industries" is \$105,550, which is more than 50% higher than the overall median figure of \$68,440 shown above. Presumably, the 90th percentile figure for film producers and directors is, likewise, substantially higher than the figure provided, but the Petitioner did not submit that information.

The Petitioner has not satisfied this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

The Petitioner served as an assistant director for portions of [redacted] which IMDb's Box Office Mojo ranks at [redacted] in the genre of "Sports – Boxing" films, remaining in theaters for seven weeks and earning a "Total Lifetime Gross" of \$4.7 million. The printout does not state the total number of films in the "Sports – Boxing" subgenre, or provide the range of their commercial performance and longevity. Therefore, the ranking lacks crucial context. For example, a ranking of [redacted] out of 500 films would be rather more persuasive than a ranking of [redacted] out of 50.

It is significant that the Petitioner's field of endeavor is not limited to the subgenre of dramas about boxing, and therefore restricting the comparison to other such films appears to arbitrarily exclude the vast majority of films produced for entertainment. In terms of a bigger picture, the same submitted Box Office Mojo printout ranks [redacted] at [redacted] for "All Time Domestic," and [redacted] for "Worst Openings – Wide Releases Adjusted." An IMDbPro printout in the record estimates the budget for [redacted] at \$20 million, while the reported "Total Lifetime Gross" was less than one-fourth that amount. Given these figures, the commercial success of [redacted] is, at best, debatable.

The Petitioner also claims to have "attained commercial success in [redacted] as a Filmmaker for some of the most successful films in the country." The Petitioner submits a table of "[redacted] films screened from 1976 to 2016," attributed to a [redacted] government authority. The Petitioner worked on some

of the films named. The table shows attendance and box office figures for ten films, but does not explain the purpose of the list. For example, the table does not indicate that the films are the highest-grossing during the 40-year period specified. It is simply a list of ten films. Submitted by itself, it lacks sufficient context to establish commercial success.

The evidence submitted does not establish the Petitioner's commercial success in the performing arts.

For the reasons discussed above, we conclude that the Petitioner has not satisfied at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

B. Final Merits Determination

Because the Director issued a final merits determination, we will address that determination here, and explain why the petition would not have been approved had we proceeded to such a determination.

The Director's final merits determination was a single paragraph, focusing on the conclusion that the Petitioner has not "risen to the top of the filmmaking industry" because she "makes no claims as a lead director. Her roles as assistant director are secondary to the lead or primary directors." We agree with the Petitioner that this analysis does not take the record as a whole into consideration. A first assistant director has a distinct role within a given production, and is not simply an aspiring director serving what amounts to an apprenticeship in a lesser capacity.

Notwithstanding the deficiencies of the Director's final merits determination, the record as a whole does not place the Petitioner at the very top of her field or establish sustained national or international acclaim.

The record shows that the Petitioner has worked on over 20 films since 1998, usually as a first assistant director. Longevity in the industry, however, is not the same as sustained national or international acclaim. The Petitioner has worked on some well-received films, but the record does not support some key claims regarding, for example, prizes and memberships. As noted above, the Petitioner initially cited two projects as evidence of her compensation, but the record does not show that she actually participated in those projects. Such issues affect the overall credibility and weight of ambiguous claims and evidence in the record.

The independent, objective evidence in the record does little more than establish the Petitioner's film credits. The petition relies heavily on letters from individuals who have worked with the Petitioner. These letters certainly have weight in terms of describing the Petitioner's activities, but by their nature such letters cannot strongly establish that the Petitioner is acclaimed beyond those who have worked with her. More than one of these letters appears to be from the Beneficiary's spouse.

The Petitioner's work has appeared at several film festivals, which the Director recognized by granting the criterion related to artistic display. But the Petitioner has not established the significance of these particular festivals or shown that the festival appearances particularly highlighted the Petitioner's involvement in the films in a manner that would reflect or contribute to acclaim.

Several of the Petitioner's assertions regard the [redacted] Short Film Festival, held in conjunction with the annual [redacted] Book Fair in [redacted]. At the [redacted] such festival, the Petitioner taught workshops, oversaw student film productions, and served on the festival's jury. A press release in the record indicates that participation is restricted to films "directed by [redacted] filmmakers (or of [redacted] descent) residing abroad," and that the festival's top prize is a \$1300 cash award. The Petitioner has not established the greater significance of this very narrowly focused event. Therefore, her participation in the event is not inherently indicative of acclaim.

The Petitioner's other documented participation as a judge was at the [redacted] Film Festival. The Petitioner does not submit any independent evidence to establish the reputation or significance of this event; the submitted materials consist of a letter from an organizer and a press release. Participation is restricted to "short films and video works produced by alumni [and] . . . students in the School of Media Studies" at the [redacted] in [redacted].

The president of a production company states that he invited the Petitioner to participate in a "Student Produced Film Showcase" based on her "real work experience, sensitivity and the ability to work well with others." None of these factors relates directly to acclaim or recognition in the field. The record suggests that the Petitioner's involvement as a judge derived not from her reputation but because the individual who invited her had known her "for the past 15 years."

The record does not show that the Petitioner has consistently worked on successful or high-profile films, consistent with sustained acclaim. The Petitioner did work on [redacted] which featured well-known actors such as [redacted] but the evidence indicates her involvement was limited. The director of that film states that the Petitioner participated only in certain sequences rather than "the complete shooting." In the IMDb printout in the record, [redacted] is the only film showing the Petitioner simply as an "assistant director" rather than "first assistant director,"² an important distinction given the assertions elsewhere in the record about the role of the first assistant director in organizing a production.

The record, as a whole, does not establish sustained national or international acclaim as the statute and regulations require.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. The record in the aggregate does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top or who have worked with more successful or prominent figures. Here, the Petitioner has not shown that her work, in

² For another film, [redacted] IMDb credits the Petitioner as both "assistant director" and "first assistant director," demonstrating that the industry recognizes a meaningful distinction between the two terms.

particular, has garnered her sustained national or international acclaim or is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.